

Breaking Up is Hard to Do: is mediation the answer?

Ruth Smallacombe

There is a lot of misunderstanding about mediation, so let's start with what it is and what it isn't. It is not counselling; neither is it legal advice, nor reconciliation. Mediation helps separating and divorcing couples to communicate better. It also helps them to sort out the arrangements that arise as a result of their relationship breakdown, usually centred around housing, finance and children. It provides, hopefully, a more civilised and cost-effective arena than the litigation and court route which can create even further divisions in an already fragile relationship. Mediators help people keep talking, so that they can resolve issues together and make their own informed decisions. Research shows that the impact of divorce on children is less destructive if their parents can continue to cooperate.

Family mediation is by no means a new idea — independent mediators have been around for twenty years, attempting to mitigate the impact of divorce. But the divorcing public has been slow to

learn of its benefits — of the nearly 160,000 marriages which end each year, less than 10% of couples use mediation.

With 20% of marriages ending within the first 10 years and over 2.5 million children living in reconstituted families, the need for reform is clear. The Family Law Act, 1996, will increase the use of media-



Ruth Smallacombe is chair of the Family Mediators Association, and co-founder of the Family Law Consortium. She has been involved with the caring professions for over 20 years and practises as a mediator, counsellor, trainer and supervisor.

tion as a more effective way of dealing with relationship breakdown, and it is imperative that therapists are aware of when and how it can help and where to refer their clients. Through a series of meetings with trained and impartial mediators, couples can keep some sense of control and make decisions that they can live with. Mediation works in parallel with the legal system, so that although people don't make legally binding agreements, they come to decisions that mediators then document, and which can subsequently be put into legal agreements following individual advice to each partner.

In an ideal world, a couple would decide to come to mediation after jointly acknowledging that their relationship has broken down and they need to separate. Life being what it is, that is seldom the case. Couples are usually in very different 'emotional places' — one person is often more reluctant than the other to accept the situation. Mediators check out with each of them whether or not this is the right time to begin this process, and in some cases a period of no decision-making, or perhaps some time set aside for counselling, might be more appropriate. Sometimes in the early stages it is just too painful or difficult for a couple to be in the same room together. I guess that Mr and Mrs Perfect Mediation will have decided to break up at the same time, want the best for each other and their children, and have both concluded that mediation is a good idea. I think I've met only three of those!

It is important to establish whether the relationship is really over. Any ambiguity will be picked up by the mediators and counselling suggested. In practice it is rare for a couple to resume their relationship at

this stage, and I have my doubts as to whether that will change with the Family Law Act, which is expected to come fully into force in 2000.

Mediation is a big step for a couple; it can be the first time they have expressed their difficulties to anyone outside the marriage. Many feel that once these things are spoken they must be real: it is the beginning of the end, and can feel very traumatic. We do, of course, deal with emotional issues, but only insofar as they render people unable to focus on practical matters. We do go back into the past, but only in order to help the couple go on into the future.

An important part of the process is to establish the ground rules and principles. We ask each partner to sign a 'contract' which describes the parameters and the basis on which they agree to enter mediation. This includes the 'basics', such as costs, how mediation fits with the legal system, what information is required and the limits of confidentiality. It also reinforces both the role of the mediators and the process itself.

Mediation provides a safe and confidential place for discussions, but financial information must be openly disclosed, as it would be in court. Exceptions to confidentiality include risk to children or adults. After these preliminaries we clarify our clients' agenda. People often feel chaotic and distressed, and it is vital to give them a sense that this is a process that can be managed. A great deal of information is gathered, verbally and through forms, then discussed and displayed, usually on a flip-chart, so that everyone understands it. Only then do we start to work with the issues. This is a very practical process,

where aspirations and options may be written up on the flip-chart. We try to set out what they hope to achieve and how they could work things out. These might include decisions about who stays in the family home, how to organise an income for two households, and what future maintenance arrangements might look like. Usually, whichever way you cut the cake, there will be less money around for each party in the future. Then we test it out in a very practical, pounds-and-pence way, looking at things from all angles. Will it work for everyone, and not just for now, but into the future?

Where there are children, issues of contact, residence and schooling need to be decided. We aim to enable parents to focus on their children's needs: a difficult task when they are barely coping with their own emotions and fears, and there may be lots of conflict around. But it's very rewarding when couples do manage to discuss things as concerned parents rather than as warring partners!

In the concluding phase we review their decisions and draw up their proposals, although not all of this will take place in the final session. It may go on as a process throughout the work. Then we write it up in summaries.

Being a mediator is hard work, and can be emotionally draining. It's a bit like working with couples, but with additional stresses. As well as being aware of the process and of the emotional content, we try to redress what we see as power imbalances. Mediators are and must be perceived to be impartial and fair: on neither partner's side, but working equally for all. At the same time we are keeping lots of information in the forefront of our minds. It's a very

active process and requires a state of permanent vigilance. That's why working with a co-worker is so useful: one of us can be working with the financial information at the chart, the other keeping track of the other issues and observing responses.

The co-mediation model developed by the Family Mediators Association pairs trained mediators, one from a family law background and the other from a therapeutic profession, to work together to provide a balanced and informative forum. This seems to make sense to clients and it acknowledges the legal and emotional context of divorce. It also means, of course, that workers have a supportive colleague with whom to reflect on issues.

Don't forget — we are presiding over scenes of serious loss. It can feel dreadful to see on someone's face the impact of certain information — can you imagine seeing your family home rendered as a figure on a flip-chart, soon to be divided? Or a pension on which you have rested your security slashed at a stroke, or put in your opponent's column on the flip-chart? Or beginning to realise that you won't be seeing your children every day in the future? People show their distress in different ways. A level of upset, anger or conflict is by no means unusual, and when it gets like that we might take a break — go for a walk round the block or have a cup of tea — to allow the import of these possibilities to sink in. That's why I believe it's essential to work in a setting that respects the emotional effect of separation as well as the practical.

We are continually appealing to the 'adult' in our clients, and if the anger, bitterness and conflict are too extreme, then mediation may not be appropriate. But it's

a fine balance. There has to be some venting of emotion — otherwise we find that at the end people have come to decisions they don't feel they own, and want to change them.

I have to say that, at times, some solicitors don't help the process. They might, for example, advise one half of a separating couple: 'If you do *x* or *y*, it will weaken your position.' I remember one very nice couple who were committed parents, concerned about what to tell the children. We had several very constructive sessions about how they might tackle those conversations. But then they each went to see their own solicitors, and came back in a very altered state of mind. They had been invited to look at the worst possible scenario, and it took two more sessions to reduce the conflict between them and to rebuild some trust in each other.

Solicitors, however, remain an essential part of the whole picture and in most cases each party will be in touch with theirs. What I hope will happen in the future is that couples will go to solicitors who understand mediation and to mediators who understand the legal and financial processes, so that we all complement each other's role for the benefit of all.

As for knowing when our work has been successful, people tell us. They say things like: 'It has been difficult, but I'm glad we decided to do it this way.' Of course, they haven't experienced the alternative, which could be so much worse. It can be really gratifying to see them move on from the positions they came in with to a place of acceptance. They do a lot between sessions — talk to their children, or go together to see a new house. I'm often surprised at how much people can be

enabled to change, even after a very conflictual start.

Several organisations train mediators to work in the independent, legal and non-profit-making settings. The different theoretical models and initial backgrounds of the mediators may vary, but the process and ultimate aims of family mediation remain the same throughout.

Half the members of the Family Mediators Association are solicitors who have trained as mediators, are committed to its principles and are seeking better outcomes for families. We also train those with appropriate experience of working with families in social work or therapy. Our standards and professionalism are high, and I want to ensure that, as mediation becomes more widespread, the public is protected from ill-qualified practitioners, whatever their background. FMA is a co-founder of the UK College of Family Mediators, of which I am a governor. It was established to promote consistent standards.

The cost of going to mediation can seem high — say, £60 per person per hour. But there's no doubt in my mind that it's cheaper than two people going to separate solicitors, spending large amounts of money and, if the case goes to court, parting with tens of thousands of pounds. A guest at a dinner party recently said to me: 'I've just spent £40,000 on my divorce; if only I'd known about mediation.' If for one or two thousand pounds a couple can negotiate together with the help of trained mediators and get some legal advice on the decisions they've made *before* reaching a final settlement, they will have controlled the outcome and the costs, as well as being adequately protected in law.

Mediation is to appear in legislation for the first time with the Family Law Act of 1996, which tries to address the alarming rate of divorce in Britain. Couples will receive information on mediation, counselling and legal advice before they can start the divorce process. The Act will remove the fault basis for divorce, so that instead of lining up two solicitors all along the way and doubling the costs, the intention is that more couples will mediate together, creating co-operative arrangements for children and finance and thus making fewer demands on legal aid funds.

The new Act will also provide for a period of reflection and consideration. This, it is hoped, will help couples to determine whether the relationship really is over and to seek counselling if necessary. Partners will be required to make proper arrangements for children, property and finances before they get divorced. The last Lord Chancellor was particularly keen to save marriages, and to put resources to that end. One of the benefits of the Family Law Act is that there will be legal aid available for mediation. Pilot schemes are now under way to see how this might work in practice, and legally aided mediation is becoming more widely accessible — hopefully, by the year 2000, across the UK.

Yes, there are criticisms of mediation:

the women's lobby has been concerned that women have been 'subjected' to mediation under intimidation or violence from their partners. Research has shown that some mediators have not operated a very safety-oriented approach. We believe strongly that all situations should be screened properly for domestic violence, and that mediation must remain an essentially voluntary process wherein each partner is able to participate equally. Another misapprehension is that mediation is a 'nice' white middle-class activity and that you have to be heterosexual and married. This is absolutely not the case. Mediation offers a safe and informed arena for anyone to constructively resolve matters when their relationship fails.

Unfortunately the press are currently doing a great job of confusing people about mediation — it is a difficult concept to explain. I believe that therapists are well placed to put the record straight on the differences between mediation and counselling, and to tell clients about mediation services where appropriate. I'm sure that in the future it will become a more ordinary part of life, although we have to be clear that it's not for everybody. It requires a huge change in how we as a society look at sorting out the devastation which follows the breakup of a relationship.

Resources

The Family Mediators Association, for details of local mediators and information about training to become a mediator, 45–48 Grosvenor Gardens, London SW1W0EB; Tel: 0171 881 9400.

The Family Law Consortium, for mediation (private or legally aided) and counselling; Tel: 071 420 5000.

UK College of Family Mediators, for details of mediators and approved bodies; Tel: 0171 391 9162.